
been instrumental with participation in the development of a JPA/MOU that satisfies all the participating agencies.

The Approval must be by the governing body of the County which must also designate a "Point of Contact" to represent the County in regard to the LInX agreement.

Attachments

Joint Powers Agreement And Memorandum Of Understanding

MEMORANDUM OF UNDERSTANDING FOR PARTICIPATION IN AN INFORMATION SHARING INITIATIVE KNOWN AS THE NEW MEXICO LAW ENFORCEMENT INFORMATION EXCHANGE

A. PURPOSE.

1. The NM LInX is a federal initiative sponsored by the U.S. Attorney for the District of New Mexico and the Naval Criminal Investigative Service (NCIS). The NCIS is the administering agency for this Memorandum of Understanding (MOU). It is a cooperation and sharing effort involving participating Federal, and New Mexico State, County, and Municipal law enforcement agencies in an electronic sharing of law enforcement information through a regional warehouse of databases. This MOU permits the joint exercise of the NM LInX participant's powers to create, integrate, analyze, access and share relevant law enforcement and investigative information and a basic statement of the understanding between the participants of the tasks, methods, and responsibilities required of participants for a successful collaboration and to set forth the policy and procedures for the use of the NM LInX by the participating members, including the ownership and control of the information within the system, which may be contributed by each participant for use by the NM LInX and the other participating agencies.

2. The New Mexico legislature has stated that "the responsible exchange of complete and accurate information among law enforcement agencies is recognized as necessary and indispensable to effective law enforcement." NMSA 1978, §29-10-2 (1975). A driving impetus for the NM LInX initiative by NCIS is to further the wars against crime and terrorism in the wake of the September 11th terrorist attacks against the United States. This includes: identifying and locating criminals, terrorists and their supporters; identifying, assessing, and responding to crime and terrorist risks and threats; and otherwise preventing, detecting, and prosecuting criminal and terrorist activities. To achieve these ends, it is essential that all federal, state, county, local and special jurisdiction law enforcement agencies cooperate in efforts to share pertinent information. The NM LInX will stage relevant records of participants within a single warehouse of databases, effectively providing each participating agency with access to an electronic hub for regional law enforcement information. For security purposes, NM LInX access will be via a separate, sensitive but unclassified server located in the Albuquerque Field Office of the FBI.

3. The NM LInX will be available for use by participating law enforcement agencies in furtherance of law enforcement activities, as well as the prevention and detection of terrorist risks and threats. Utilizing the NM LInX capabilities will significantly advance public safety and security, and will enhance the protection of this Nation's critical strategic resources in the State of New Mexico.

B. PARTICIPANTS.

1. The authorized participants of the NM LInX are those law enforcement agencies whose representatives have subscribed to this Memorandum of Understanding affirming adherence to the plan and principles set forth herein.

2. The participants recognize that maximum participation by all eligible law enforcement

agencies will strengthen the purposes of NM LInX. Accordingly, the sponsors and participants anticipate and desire that other eligible agencies will participate in NM LInX in the future. An eligible agency must apply for participants' privileges and be approved by the sponsors. The sponsors shall establish criteria for eligibility to join; such as, but not limited to, security compliance, data accountability, technical capability, and operational history. A joining agency once approved by the sponsors shall also be considered a participant and shall have the same rights, privileges, obligations, and responsibilities as the original parties.

C. POINTS OF CONTACT. Each participant shall designate through its governing body an individual as the participant's point of contact (POC) for representing that participant in regard to the NM LInX. A participant may change its POC at any time upon providing written notification thereof to the POCs of all other parties.

D. AUTHORITY.

1. Authority for the Naval Criminal Investigative Service to participate in NM LInX includes Department of Defense (DoD) Instruction 4000.19 dated 9 August 1995, Department of Defense (DoD) Instruction 5505.3 dated June 21, 2002, and SECNAVINST 5430.107 dated December 28, 2005.

2. Authority for the Air Force Office of Special Investigations to participate in NM LInX includes Department of Defense (DoD) Instruction 4000.19 dated 9 August 1995, Department of Defense (DoD) Instruction 5505.3 dated June 21, 2002, and Air Force Policy Directive (AFPD) 71-1 dated 1 July 1999.

3. Authority for the New Mexico state, county, and municipal law enforcement agencies to participate in NM LInX includes NMSA 1978 §§ 3-13-2; 4-37-1; 4-41-2; 29-2-18; 29-3-2 and 3; and 29-10-5.

4. Authority for the FBI to enter into this MOU includes: 28 U.S.C. 533, 534; 28 C.F.R. 0.85; and Presidential Decision Directives 39 and 62.

E. MISSION/OBJECTIVES. The NM LInX seeks to capture the cumulative knowledge of the region's law enforcement agencies in a systematic and ongoing manner to maximize the benefits of information gathering and analysis to prevent and respond to terrorist and criminal threats; to support preventive, investigative and enforcement activities; and to enhance public safety and force protection for the Nation's critical infrastructure in the state of New Mexico. The specific objectives of the NM LInX are to:

1. Integrate specific categories of existing law enforcement, criminal justice and investigative data from participating agencies in near real time within one data warehouse that will be accessible by all participating agencies.

2. Dramatically reduce the time spent by participating agency personnel in search and retrieval of relevant data by providing query and analytical tools.

3. Provide the means for the participating agencies to develop analytical products to support law enforcement, criminal investigation, force protection, and counter-terrorism operational and investigative activities.

4. Provide an enhanced means for the participating agencies to produce strategic analytical products to assist administrative decision-making processes for area law enforcement executives.

F. CONCEPT.

1. The NM LInX is a cooperative effort of federal, state, county, local and special jurisdiction law enforcement agencies, in which each agency is participating under its own individual legal status, jurisdiction, and authorities, and all NM LInX operations will be based upon the legal status, jurisdiction, and authorities of the individual participants. The NM LInX is not intended to have, and shall not be deemed to have, independent legal status.

2. The NM LInX will be a central, electronic repository of derivative federal, state, county, local and special jurisdiction law enforcement and investigative data, with each participant providing for use copies of information from its own records that may be pertinent to NM LInX's mission. Once the database warehouse is populated and properly structured, the system will function with querying and analytical tools in support of law enforcement activities, criminal investigations, force protection, and counterterrorism, and for the development of reports by the participating agencies for the use of their executive decision makers.

3. The NM LInX data warehouse will be resident on a server located at the FBI Albuquerque Field Office site, which meets the requirements for security accreditation and the warehouse will contain "Sensitive But Unclassified" (SBU) information from the records systems of the NM LInX participants. All parties contributing data to the NM LInX will have equal access to the NM LInX functionality via secure Internet connections for read, analytical and lead purposes only.

4. All participants who contribute data to the LInX will have equal access to the LInX functionality via secure Internet connections for read, analytical and investigative purposes only.

G. OWNERSHIP, ENTRY, AND MAINTENANCE OF INFORMATION.

1. Each participant retains sole ownership of and exclusive control over content and has sole responsibility for the information it contributes and may at will at any time update or correct any of its information in NM LInX, or delete it from the NM LInX entirely. All system entries will be clearly marked to identify the contributing participant.

2. Just as each participant retains sole ownership and control of the information it contributes, so does a participant retain sole ownership and control of the copies of that information replicated in the NM LInX.

3. The contributing participant has the sole responsibility and accountability for ensuring that no information is entered into NM LInX that was obtained in violation of any federal, state, county or local laws and ordinances applicable to the contributor.

4. The contributing participant has the sole responsibility and accountability for ensuring

compliance with all applicable laws, regulations, policies, and procedures applicable to the participant's entry and sharing of information into the NM LInX.

5. The contributing participant has the sole responsibility and accountability for making reasonable efforts to ensure the accuracy upon entry, and continuing accuracy thereafter, of information contributed. Each participant will notify the contributing participant and the sponsors of any challenge to the accuracy of the contributing participant's information.

6. Because information housed by NM LInX will be limited to duplicates of information obtained and separately managed by the entering participant within its own record system(s), and for which the contributing participant is solely responsible and accountable, information submitted by the participating parties shall not be altered or changed in any way, except by the contributing participant. The contributing participant should not make any changes to the data in the NM LInX warehouse that is not mirrored within the contributing participant's source records.

7. The NM LInX will thus only be populated with mirrored information derived from each contributing participant's own records, and is not in any manner intended to be an official repository of original records, or to be used as a substitute for one, nor is the information in the system to be accorded any independent record system status. Rather, this electronic system is merely a means to provide timely access for the law enforcement parties to information that replicates existing files/records systems.

8. To the extent that any newly discovered links, matches, relationships, interpretations, etc., located in the analysis of NM LInX information may be relevant and appropriate for preservation as independent records, it will be the responsibility of the accessing participant to incorporate such information as records of the accessing participant in the participant's own official records system(s) in accordance with that participant's records management processes (subject to obtaining any contributing participant's consent as provided below). A participant that desires to incorporate in its own separate records information contributed by another participant, including any analytical products based on another participant's information, must first obtain the data directly from the entering participant and obtain the entering participant's express permission to use the data.

9. Commercially available references, public source information, and software applications, such as mapping applications and analytical applications, are considered to be nonrecord material and will be maintained in accordance with applicable contracts and/or licensing agreements. To the extent that any such information is relevant and appropriate for preservation as independent records, it will be the responsibility of the accessing participant to incorporate such information as records of the accessing participant in the participant's own official records system(s) in accordance with that participant's records management processes and any applicable contract or licensing agreement.

10. Each agency has agreed to submit only legally sharable law enforcement, criminal justice and investigative types of records, reports, photographs, and information into the NM LInX warehouse.

11. There is no obligation and there should be no assumption that a particular participant's records housed in the NM LInX data warehouse represent a complete mirror image of that participant's records system for any subject or person.

H. ACCESS TO AND USE OF INFORMATION.

1. Subject to the conditions set forth in paragraph G, above, each participant will contribute information to the NM LInX and agrees to permit the access, dissemination, and/or use of such information by every other participant under the provisions of this operating plan and its principles (and any other applicable operating procedures that may be established for the NM LInX). The contributing participant has the sole responsibility and accountability for ensuring that it is not constrained from permitting this by any laws, regulations, policies, and procedures applicable to the submitting participant.

2. Agencies that do not provide data for inclusion in the NM LInX are not eligible to be parties without express, written approval of the NM LInX sponsors. Only duly constituted law enforcement components of federal, state, county, local or special jurisdictions may become participants of the NM LInX.

3. All parties will have access via a secure internet connection to all the information in the NM LInX, as provided in this operating plan and its principles (and any other applicable operating procedures that may be established for the NM LInX); and each agency is responsible for providing its own internet connectivity.

4. An accessing participant has the sole responsibility and accountability for ensuring that any access comports with any laws, ordinances, regulations, policies, and procedures applicable to the accessing participant.

5. A participant may only access the NM LInX when it has an official need to know the information for a law enforcement purpose, such as counterterrorism, public safety, and/or national security, after receiving training appropriate to the use of the NM LInX system.

6. An accessing participant may use information for law enforcement matters only. The system cannot be used for general licensing and employment purposes, background investigations of federal, state or local employees, or any other non-law enforcement purpose.

7. Information in the system, including any analytical products, may be used for law enforcement purposes only. Such information shall not be disseminated outside of an accessing participant without first obtaining express permission of each participant that contributed the information in question. The NM LInX information shall not be used in the direct preparation of a judicial process such as affidavits, warrants, and subpoenas. NM LInX information is NOT to be relied upon as verified fact, but must be confirmed, as with any lead, by the inquiring agency consistent with Section I Paragraph 3 of this MOU. Contributors shall take every effort to ensure only accurate information is posted, as expressed in paragraph G.5, but contributors expressly disclaim liability for any use of the information beyond the stated permitted uses in this MOU.

8. Notwithstanding the requirement that information may not be disseminated without

first obtaining express permission of each participant that contributed the information in question, in accordance with and to the extent permitted by applicable law, required court process, or guidelines issued jointly by the Attorney General of the United States and the Director of Central Intelligence, immediate dissemination of information can be made if a determination is made by the recipient of the information:

(a) That the matter involves an actual or potential threat of terrorism, immediate danger of death or serious physical injury to any person, or imminent harm to the national security; and

(b) Requires dissemination without delay to any appropriate federal, state, local, or foreign government official for the purpose of preventing or responding to such a threat.

The owner of the information shall be immediately notified of any and all disseminations made under this exception.

9. Any requests for reports or data in NM LInX records from anyone other than a participant of the NM LInX will be directed to the contributing participant and shall be disclosed, if at all, in conformity with Section M, hereto.

10. Agencies who are not part of the NM LInX will not have direct access to NM LInX. Requests by such agencies for copies of information contained in NM LInX must be referred to the individual NM LInX participant that owns the information.

11. The information in the NM LInX shall not be used to establish or verify the eligibility of, or continuing compliance with statutory and regulatory requirements by applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under the Federal or State benefit programs, or to recoup payments or delinquent debts under such Federal or State benefit programs.

12. The NM LInX will include an audit capability that will log user activity. Each agency will designate a point of contact who shall have access to that participant agency's portion of the audit log. However, the audit log aggregate is not a record of information wholly controlled by any one participating agency and no single participant agency may disclose the content of the entire log. Any requests for copies of the entire audit log will be forwarded to each participant agency for direct response to that participant agency's portion of the audit log for disclosure, if any, in conformity with Section M, hereto.

I. SECURITY.

1. Each participant will be responsible for designating those employees who have access to the NM LInX. This system has been developed with the capability to record each use of the system, including the identity of the individual accessing the system, and the time of the access to the system, and the information queried. The system was developed with security in mind. It shall be remembered by each participating agency that access to the information within the system shall be the result of a legitimate law enforcement need and purpose. All information should be considered "sensitive law enforcement information" until the contributing agency determines otherwise.

2. Each participant agrees to use the same degree of care in protecting information accessed through the NM LInX system as it exercises with respect to its own sensitive information. Each participant agrees to restrict access to such information to only those of its (and its governmental superiors) officers, employees, detailees, agents, representatives, task force participants, contractors/subcontractors, consultants, or advisors with an official "need to know" such information. Each participant agrees to take appropriate corrective administrative and/or disciplinary action against any of its personnel who misuse the NM LInX system as if it were an abuse of their own sensitive information systems of records.

3. Each participant is responsible for training those employees authorized to access the NM LInX system regarding the use and dissemination of information obtained from the system. Employees should be given a clear understanding that the information used in the preparation of affidavits, or obtaining subpoenas, warrants, and other legal and judicial process, must be the information gathered from the originating agency after use of LInX as a lead, but never the LInX information itself. Participating agencies should also fully brief accessing employees about the proscriptions for using third-party information as described in Section H.

J. PROPERTY.

1. The equipment purchased by NCIS to support this effort will remain the property of the NCIS. After expiration of any warranties, NCIS and the NM LInX sponsors will determine the responsibility for the maintenance of the servers or other equipment.

2. Ownership of all property purchased by parties other than NCIS will remain the property of the purchasing participant. Each participant accessing the NM LInX from the participant's facility shall provide its own computer stations for its designated employees to have use and access to the NM LInX. The accessing participant is responsible for configuring its computers to conform to the access requirements. Maintenance of the equipment purchased by the accessing participant shall be the responsibility of that participant.

K. COSTS.

1. Unless otherwise provided herein or in a supplementary writing, each participant shall bear its own costs in relation to the NM LInX. Even where a participant has agreed (or later does agree) to assume a particular financial responsibility, the participant's express written approval must be obtained before the incurring by another participant of each expense associated with the responsibility. All obligations of and expenditures by the parties will be subject to their respective budgetary and fiscal processes and subject to availability of funds pursuant to all laws, regulations, and policies applicable to and required by the governing body of the member organization. The parties acknowledge that there is no intimation, promise, or guarantee that funds will be available in future years.

L. LIABILITY.

1. The NM LInX is not a separate legal entity capable of maintaining an employer-employee relationship and, as such, all personnel assigned by a participant to perform NM LInX-related functions shall not be considered employees of the NM LInX or of any other party for any purpose. The assigning party thus remains solely responsible for supervision, work schedules, performance appraisals, compensation, overtime, vacations, retirement, expenses, disability, and all other employment-related benefits incident to assignment of its personnel to NM LInX functions.

2. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under this MOU.

3. No party shall be responsible for liability incurred as a result of any other party's act or omissions in connection with this MOU. Any liability incurred as a result of any party's participation in this MOU is subject to the immunities and limitations provided and imposed by the law of the jurisdiction of the party incurring such liability.

M. DISCLOSURE OF THIRD-PARTY INFORMATION.

1. When addressing any request for the disclosure of third-party information where that information was obtained as a result of a query(s) made through the NM LInX system, the participating participants shall comply with the following policy:

(a) In all cases, for providers of any third-party information held in another NM LInX participant's files, the provider retains proprietary ownership of the information other than as provided by specific law.

(b) As established in Sections G, H, and I of the NM LInX MOU (and any other applicable operating procedures that may be established for the NM LInX), information acquired through the NM LInX system by any participant and all participants, shall be

considered sensitive law enforcement information, the nondisclosure of which is essential to law enforcement or the protection of on-going investigations and persons' rights to privacy. Therefore, in all cases, the participant with proprietary interest will be immediately notified of a request for sharing or disclosure of that information from any agencies or parties outside of participating participants in the NM LInX system.

(c) All participants agree to assist and cooperate with any other participant or participants in protecting information from harmful disclosure to the fullest extent of the law.

(d) It is not the intention of this agreement to circumvent or obstruct existing open government and/or public information disclosure laws. Nor is there any intent to interfere with or obstruct lawful discovery. Rather it is intended to ensure the protection of sensitive law enforcement information, information that has been designated as part of an active and ongoing investigative effort by any participant, and other information as protected by applicable Federal and State privacy laws.

N. NO RIGHTS IN NON-PARTIES.

1. This NM LInX MOU is a basic statement of the understanding between the participants of the tasks and methods required of participants for a successful collaboration and should not be construed to create or confer on any other person or entity any right or benefit, substantive or procedural, enforceable at law, or otherwise, against the NCIS, the Department of the Navy, the Department of Defense, the FBI, the Department of Justice, the United States, any other participant, or any State, county, municipality, town or other sponsor under whose auspices a participant is participating in the NM LInX or the officers, directors, employees, detailees, agents, representatives, contractors, subcontractors, consultants, advisors, successors, assigns or other agencies thereof.

O. EFFECTIVE DATE / DURATION / MODIFICATION / TERMINATION.

1. As among the original participants, the NM LInX MOU becomes effective when the duly authorized representatives of each participant sign it. For participants who subsequently join, the NM LInX MOU becomes effective when completed and signed by the joining participant's duly authorized representative and countersigned by the representatives of all the other parties applicable at the time of the joining.

2. The NM LInX shall continue in force indefinitely for so long as it continues to advance the participants' mission purposes, contingent upon approval and availability of necessary funding. The sponsors shall specifically address the vitality and continuation of the NM LInX each year in January.

3. The NM LInX may be modified by the sponsors. It is anticipated that the sponsors will cooperatively address and resolve administrative, technical, and operational details relating to the NM LInX. The participants will be advised of any such administrative, technical, and operational modification in writing as soon as practicable.

4. The NM LInX may be terminated at any time by the sponsors. A participant's duly authorized representative may also terminate the participant's participation in the NM LInX upon written notice to all other participants of not less than thirty (30) days. A participant's participation may also be terminated involuntarily by the sponsors as may be provided under the provisions of this MOU and any other applicable operating procedures that may be established for the NM LInX.

5. Upon termination of this NM LInX, all property being used under its purview will be returned to the respective supplying participant. Similarly, if an individual participant's participation in the NM LInX is terminated, the participant will return any property to supplying parties, and the remaining parties will return any property supplied by the withdrawing participant.

6. All information contributed to the NM LInX by a terminating participant will be deleted from NM LInX.

7. As to information in the NM LInX system during a participant's participation in the NM LInX, the rights, obligations, responsibilities, limitations, and other understandings with respect to the disclosure and use of such information shall survive any termination. This applies both as to a terminating participant's information, and to the other participants' disclosure and use of a terminating participant's information.

P. APPENDICES.

APPENDIX A: The form for new agencies to participate in NM LInX (and copies of executed forms for each new agency which has so joined).

IN WITNESS WHEREOF, the participants have executed this basic statement of the understanding between the parties of the tasks, methods, and responsibilities required for a successful NM LInX by the signatures of the duly authorized representative of each participating agency on an individual page attached hereto and incorporated herein as part of the NM LInX MOU.

New Mexico Law Enforcement Information Exchange (NM LInX) Memorandum of Understanding

Signatory Page

Agency: INCORPORATED COUNTY OF LOS ALAMOS

Signature: _____ Date: _____

Name: Michael G. Wheeler

Title: Council Chair

APPENDIX A: NEW MEXICO LInX

PURPOSE. This document effects the joining by the _____
in the NM LInX UNDER THE NM LInX MOU.

AUTHORITY. Authority for the Joining Participant to join the NM LInX includes: _____
_____.

AFFIRMATION. The Joining Participant shall abide by all provisions and assume all obligations and responsibilities of the NM LInX and any other applicable operating procedures that may be established for the NM LInX, including any formal changes and any administrative, technical, and operational resolutions in effect at the time of execution (as to which the Joining Participant acknowledges being provided copies or other adequate notice). In return, the Joining Participant shall also be considered a participant and shall have the same rights and privileges as the original parties.

POINT OF CONTACT. The Joining Participant's POC is:

Name and Title:

Office Phone: _____ Cell: _____ Fax:

Address:

Email/Other:

COSTS. Unless otherwise agreed in writing, the Joining Participant shall bear its own costs in relation to the NM LInX.

EFFECTIVE DATE/DURATION/TERMINATION. This document shall take effect when completed and signed by the Joining Participant's duly authorized representative and countersigned by the representatives of the NM LInX sponsors at the time of joining. Thereafter, duration and termination of the Joining Participant's participation in the NM LInX shall be as provided in the NM LInX MOU and any other applicable operating procedures that may be established for the NM LInX.

FOR THE JOINING PARTICIPANT:

Signature: _____ Date:

Name:

Title and Agency:

FOR THE NEW MEXICO LAW ENFORCEMENT INFORMATION EXCHANGE (NM LInX):